

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIC LYONS,
Plaintiff

v.

LT. JOSEPH EMERICK, et al.,
Defendants

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) Civil Action No. 03-75Erie
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MOTION FOR EXTENSION OF TIME and
OBJECTIONS TO DEFENDANT VAN SLYKE'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, Eric Lyons, and respectfully motions this court for an extension of time to file his response to Defendants' Motion for Summary Judgment due June 24, 2005, and submits Objections to the Defendant's motions as being of issues already decided before this Court in a previous Motion for Summary Judgment which the Court had denied and which the Defendant had not objected to in the time given by the Court.

In support of this Motion, the Plaintiff Represents the following for the Court's consideration.

Plaintiff is the pro se litigant in the above-captioned case. Following a telephone conference held before this Court on March 18, 2005, Defendants Shawn Van Slyke, Joseph Emerick, James Skindell, Gerald McShane, Tod McLaughlin and James DiBello had requested leave to file dispositive motions against Plaintiff specifically on the issue of the statute of limitations. Leave was granted for dispositive motions to be filed on or before May 27, 2005. Plaintiff was ordered to respond to said Motion

on or before June 24, 2005. See Order dated March 18, 2005. Due to reasons beyond Plaintiff's control, he is unable to meet the filing deadline and this Motion is ripe for consideration.

On May 27, 2005, Defendant Van Slyke had submitted a Motion for Summary Judgment; the remaining above-named Defendants had filed their Motion for Summary Judgment on June 2, 2005, with a statement indicating that they were incorporating the Motion for Summary Judgment, Brief and Appendix in support thereof of Defendant Van Slyke. No brief on their behalf was entered.

On this motion, Plaintiff first raises the objection that Defendant Van Slyke's Motion for Summary Judgment goes beyond the scope of the statute of limitations issue for which they had requested leave to file dispositive motions. Here, the Def. addresses the statute of limitations, but goes on to reiterate issues that had been previously decided upon by this Court in an earlier ruling. (See Document # 87 and 100). In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties were allowed ten (10) days from the date of service to file written objections to the Report and Recommendations ("R&R"). Defendant Van Slyke had not filed any objections to the R&R when allowed and the R&R had been adopted as the opinion of the Court. (See Document # 91).

The Defendant's Motion for Summary Judgment on the issues other than that of the statute of limitations should not be

permitted to proceed before this Court, as he had been given time to object to the Magistrate's decision if there were issues he believed were objectionable. The Defendant's new Motion offers no novel issues for this Court to consider, but only goes on to rehash stale arguments that were laid to rest.

Therefore, Defendant Van Slyke's Motion for Summary Judgment should be deemed moot and Plaintiff's objections thereto on issues other than the statute of limitations should be granted.

In the alternative that the Court reasonably finds that the Defendant's Motion should proceed on all issues raised, Plaintiff notes that the Defendant's Motion cites over forty (40) case authorities as support. The Plaintiff, needing to re-search each of these cases to determine if there is any applicable standing to his own case, cannot possibly access them all at once due to an institutional policy which prohibits prisoners from obtaining no more than three (3) case law requests per week- NO EXCEPTIONS. (See Exhibit 1). ¹ Under this restriction, it would take the Plaintiff at least 180 days to order and research that number of cases, shepardize them, order any rebuttle cases if needed and prepare his own response to the Defendants. Therefore, the Plaintiff requires additional time to respond to all the added issues Defendant raised in his Motion.

Plaintiff is aware of the Court's order of March 18, 2005,


¹ Plaintiff has only two (2) copies of this document at this time. Once photocopies are made he will forward a copy to each Defendant accordingly. Plaintiff apologizes for the inconvenience.

that any further motions for extension of time will only be granted for good cause shown. The extraordinary circumstances described herein are of good cause why this Motion must be granted. The occurrences herein are beyond the control of the Plaintiff, and his Motion in no way is designed to prejudice the Defendants or to delay the process of this litigation.

In addition, the Plaintiff still has not had the opportunity to view the video tapes which he had gotten the Court's approval for. This process is being delayed by the institution where time and lack of available staff are of issue.

WHEREFORE, based upon the aforementioned circumstances as described in this Motion. the Plaintiff respectfully requests the Court to grant an extension of time for a total of 180 days so that he may have time to properly research the numerous legal case authorities which the Defendant has raised in his Motion for Summary Judgment. The Plaintiff further requests in the alternative that the Court grant his Objections to the Defendant's Motion for Summary Judgment on the issues that had previously been decided by the Court and that are not in compliance with the statute of limitations for which leave for dispositive motions was granted.

Respectfully submitted,


Eric J. Lyons, EX-1127
50 Overlook Drive
LaBelle, PA 15450

Date: June 17, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIC LYONS,
Plaintiff

V.

LT. JOSEPH EMERICK, et al.,
Defendants

Civil Action No. 03-75Erie

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served a true and correct copy of the within Motion for Extension of Time and Objections to Defendant Van Slyke's Motion for Summary Judgment via first class mail on June 17, 2005, to the following persons:

Ms. Rebecca R. Haywood, Esq.
700 Grant Street, Ste. 400
Pittsburgh, PA 15219

Mr. Gerald J. Villella, Esq.
626 State Street, Rm. 505
Erie, PA 16501

George Wellsby
1177 East Gore Road
Erie, PA 16504

Respectfully submitted,

E. J. Lyons
Eric J. Lyons, EX-1127
50 Overlook Drive
LaBelle, PA 15450

Date: June 17, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ERIC LINDLEY
Plaintiff

v.

JOSEPH EMBENY ET AL.,
Defendants

Liberty Action No. 03-72-ERIC

MODIFIED CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served a true and correct copy of the within motion for Extension of Time and Objection to Defendant's Motion for Summary Judgment and verification on all parties to the following parties as a result of the initial service of June 17, 2005, being late and due to lack of notice:


Mr. Rebecca R. Harwood, Esq.
700 E. 1st Street, Suite 200
Pittsburgh, PA 15221

Mr. Gerald J. Vitching, Esq.
627 1/2th Street, Suite 200
Erie, PA 16501

Eric Lindley
1177 East Erie Road
Erie, PA 16501

Clerk of Court
Room 2001-1000
Erie, PA 16501

Respectfully Submitted


Eric J. Lindley, Esq.
20 One Lock Drive
Lithonia, GA 30058

June 29, 2005

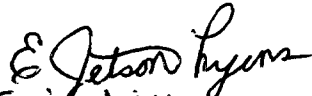
Clerk of Courts
P.O. Box 1820
Erie, PA 16507

In Re: Lyons v. Emerick, et al.,
CA No. 03-75 Erie

Dear Clerk:

Please find enclosed a copy of the motion I'd filed before the Court on June 17, 2005. Attached is a modified certificate of service indicating that I had re-served a copy of said motion to the Defendants on this day due to delay for lack of postage.

Thank You for Your attention.

Very truly Yours,

Eric J. Lyons, EX1127
50 Overlook Drive
LaBelle, PA 15450

c: All Party of record